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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,617	12/02/2003	Felipe Albertao	08212/0200344-US0	4945
38879	7590	08/03/2006	EXAMINER	
DARBY & DARBY P.C. P.O. BOX 5257 NEW YORK, NY 10150-6257			NGUYEN, PHILLIP H	
			ART UNIT	PAPER NUMBER
			2194	

DATE MAILED: 08/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/725,617	Applicant(s) ALBERTAO, FELIPE	
	Examiner Phillip H. Nguyen	Art Unit 2194	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20040518</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the original filing of December 2, 2003. Claims 1-28 are pending and have been considered below.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Moshir et al (US 6,990,660).
4. Claim 1: Moshir discloses a network device for managing a software change over a network comprising:
 - a. A transceiver arranged to send and to receive a packet over the network (Col 6, line 20-67; Col 7, line 1-10);
 - b. Determining an update policy associated with the network device (Col 24, line 60-67; Col 25, line 1-40);
 - c. Determining an availability of the software change based in part on the update policy (Col 25, line 60-67);

Art Unit: 2194

- d. Selecting the software change based in part on the update policy (Col 23, line 20-63);
- e. Receiving the software change through a distribution service according to the update policy (Fig 2, item 220; update server); and
- f. Installing the software change on the network device according to update policy (Col 23, line 20-63).

Claim 2: Moshir discloses the network device for managing a software change over a network as in claim 1 above, and further discloses the network is at least one of a network appliance, server appliance, internet appliance, intranet appliance, web server, cache server, file server, router, gateway, switch, bridge, firewall, and a proxy (Col 6, line 20-67).

Claim 3: Moshir discloses the network device for managing a software change over a network as in claim 1 above, and further discloses the update policy further comprises at least one of a selection criterion, a delivery criterion, and an installation criterion (Col 17, line 30-45; Col 23, line 20-63; Col 10, line 7-20).

Art Unit: 2194

Claim 4: Moshir discloses the network device for managing a software change over a network as in claim 1 above, and further discloses the distribution service is further configured to enable access to the software change from at least one of a repository, a third party service, a test server, and a development server (Col 20, line 54-60).

Claim 5: Moshir discloses the network device for managing a software change over a network as in claim 1 above, and further discloses the distribution service further comprises at least one of a reverse proxy server, and a peer-to-peer device (Col 7, line 45-67).

Claim 6: Moshir discloses the network device for managing a software change over a network as in claim 1 above, and further discloses selecting the software change further comprises determining the selection based in part on at least one of a hardware configuration of the network device, a priority associated with the software change, a software configuration of the network device, a type associated with the software change, a control list, an impact associated with the software change, and a schedule (Col 17, line 30-45).

Claim 7: Moshir discloses the network device for managing a software change over a network as in claim 1 above, and further discloses the software change is independent of a software version number (Col 1, line 65-67; Col 2, line 1-8).

Claim 8: Moshir discloses the network device for managing a software change over a network as in claim 1 above, and further discloses validating the integrity of the software change in part through a cryptographic mechanism (Col 24, line 27-34).

Claim 9: Moshir discloses the network device for managing a software change over a network as in claim 1 above, and further discloses the software change further comprises a third-party change, wherein the third party change is included in the software change at least in part by a third party (Col 20, line 54-60).

Claim 10: Moshir discloses the network device for managing a software change over a network as in claim 1 above, and further discloses installing the software change further comprises generating a log that enables rollback of the installed software change (Col 28, line 10-50).

Claim 11: Moshir discloses the network device for managing a software change over a network as in claim 1 above, and further discloses the software change further comprises a change package that includes at least one of a binary file, a configuration file, a change descriptor, a package descriptor, test procedure, and a deployment descriptor (Col 8, line 5-25).

Claim 12: Moshir discloses the network device for managing a software change over a network as in claim 1 above, and further discloses the software change is digitally signed by at least one of a developer, releaser, tester, third party, and a manager associated with the software change (Col 15, line 40-60).

Claim 13: Moshir discloses the network device for managing a software change over a network as in claim 1 above, and further discloses determining the availability of the software change further comprises subscribing to the distribution service (Col 11, line 20-50).

Claim 14: Moshir discloses a method for managing a software change to a network device over a network comprising:

- a. Determining an update policy associated with the network device (Col 24, line 60-67; Col 25, line 1-40);
- b. Determining an availability of the software change based in part on the update policy (Col 25, line 60-67);
- c. Selecting the software change based in part on the update policy (Col 23, line 20-63);
- d. Receiving the software change through a distribution service according to the update policy (Fig 2, item 220; update server); and
- e. Installing the software change on the network device according to update policy (Col 23, line 20-63).

Claim 15: Moshir discloses the method for managing a software change to a network device over a network as in claim 14 above, and further discloses determining the update policy further comprises determining at least one of a selection criterion, a delivery criterion, and an installation criterion for the software change (Col 17, line 30-45).

Claim 16: Moshir discloses the method for managing a software change to a network device over a network as in claim 14 above, and further discloses determining an availability of the software change further comprises:

- a. Subscribing the distribution service (Col 11, line 20-50); and
- b. Monitoring the distribution service for the software change (Col 4, line 55-67).

Claim 17: Moshir discloses the method for managing a software change to a network device over a network as in claim 14 above, and further discloses selecting the software change further comprises determining the selection based in part on at least one of a hardware configuration of the network device, a priority associated with the software change, a software configuration of the network device, a type associated with the software change, a control list, an impact associated with the software change, and a schedule (Col 17, line 30-45).

Claim 18: Moshir discloses the method for managing a software change to a network device over a network as in claim 14 above, and further discloses the software change further comprises a change package that includes at least one of a binary file (data file), a configuration file, a change descriptor, a package descriptor, test procedure, and a deployment descriptor (Col 8, line 5-25).

Claim 19: Moshir discloses the method for managing a software change to a network device over a network as in claim 14 above, and further discloses installing the received software change further comprises determining at least one of a priority, an impact, an integrity, and a time associated with the installation of the software change (Col 10, line 5-20).

Claim 20: Moshir discloses the method for managing a software change to a network device over a network as in claim 14 above, and further discloses the distribution service further comprises at least one of a reverse proxy server, and a peer-to-peer device (Col 7, line 45-67).

Art Unit: 2194

Claim 21: Moshir discloses a system for communicating a change package over a network, comprising:

- a. A repository configured to store the change package (Fig. 3, item 338);
- b. A distribution service, coupled to the repository, that is configured to distribute the change package over the network (Fig. 7);
- c. Determining an update policy associated with the client (Col 24, line 60-67; Col 25, line 1-40);
- d. Determining an availability of the change package based in part on the update policy (Col 25, line 60-67);
- e. Selecting the change package based in part on the update policy (Col 23, line 20-63);
- f. Receiving the change package through a distribution service according to the update policy (Fig 2, item 220; update server); and
- g. Installing the received change package on the client according to update policy (Col 23, line 20-63).

Claim 22: Moshir discloses the system for communicating a change package over a network as in claim 21 above, and further discloses the distribution service further comprises at least one of a reverse proxy server, and a peer-to-peer network (Col 7, line 45-67).

Claim 23: Moshir discloses the system for communicating a change package over a network as in claim 21 above, and further discloses the repository further comprises at least one of trust information, subscription information, and an observer mechanism (Col 3, line 55-67).

Claim 24: Moshir discloses the system for communicating a change package over a network as in claim 21 above, and further discloses a license manager coupled to the distribution service, and enabled to provide at least one of a public key certificate, a software license, a control list, and a revocation list (Col 14, line 30-50).

Claim 25: Moshir discloses the system for communicating a change package over a network as in claim 21 above, and further discloses the change package further comprises least one of a software change, a change descriptor, a package descriptor, and a deployment descriptor (Col 16, line 20-25).

Claim 26: Moshir discloses the system for communicating a change package over a network as in claim 21 above, and further discloses the client further comprises at least one of a network appliance, server appliance, internet appliance, intranet appliance, web server, cache server, file server, router, gateway, switch, bridge, firewall, and a proxy (Col 6, line 20-67).

Claim 27: Moshir discloses the system for communicating a change package over a network as in claim 21 above, and further discloses the distribution service further comprises at least one of a reverse proxy server, and a peer-to-peer device (Col 7, line 45-67).

Claim 28: Moshir discloses an apparatus for managing a software change over a network comprising:

- a. A transceiver arranged to send and to receive a packet over the network (Col 6, line 20-67; Col 7, line 1-10);
- b. A means for determining an update policy associated with the apparatus (Col 24, line 60-67; Col 25, line 1-40);
- c. A means for determining an availability of the software change (Col 25, line 60-67);
- d. Means for selecting the software change (Col 23, line 20-63);

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Sakanishi (US 6,678,888) discloses method and system for software distribution.

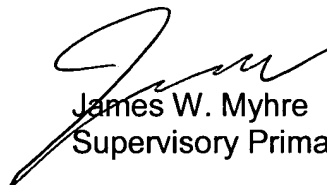
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip H. Nguyen whose telephone number is (571) 270-1070. The examiner can normally be reached on Monday - Friday 10:00 AM - 3:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Myhre can be reached on (571) 270-1065. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2194

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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James W. Myhre
Supervisory Primary Examiner